1949

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File No. O.Leg/49

Legal Department
A Branch.

Subject:-

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Opinions under the
Land Acquisition Act 1894

File No. O.Leg/49

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C O N T E N T S.

Legal Department, File No. O. Leg./49.

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Acquisition of land which was taken possession of by Government for constructing a tank.

Land Acquisition Act, 1894. sections 4 and 6.

The land being already in possession of Government and no longer arable or waste, the urgency clause cannot be applied (see R.L.A.'s opinion No. 11470, dated 1-12-1947 and No. 881, dated 27-1-1948). Although Government took possession of the land in 1943 the compensation payable for the land acquired will be the market value of the land at the date of the publication of the notifications under section 4(1) of the Act (see section 23); and the owners would be also entitled to compensation for the use of land from 1943 till the date of notification. In view of the fact that Government took possession of lands unauthorisedly so far back as 1943 it would be proper to negotiate an amicable settlement of compensation with the owners failing which recourse may be had to the Land Acquisition Act, 1894.

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U.D. to R.D., No. 304; dated the 7th January, 1949.

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R.I.No. 14550 dated 4.11.194

Government approved the proposal of the Director of Agr. that the Imperial Chemical Industries (India) Ltd. should be appointed as a sole distributing agents of Bombay Govt. for imports of fertilisers allotted to Bom. Govt. by the Govt. of India, and informed the Director of Agr. accordingly on 20-12-45. It seems that the said order of govt. appointing I.C.I. as sole distributing agents was communicated by the Director of Agr. to the said Co. No ~~xx~~ document of agency in confor... with the provisions of sec. 175(3) of the Govt. of India Act, 1935, appears to have been executed, nor is there any correspondence from which the terms of the agency can be spelt out.

From para 4 of the letter from the Govt. of India, Deptt. of Labour, Health and Lands, No F-42-12/43-P dt. 13-3-1944, it will be clear that the distribution and sale of the fertilisers within the Province is the concern of the Provincial Government except in the case of what is supplied to the planters of tea, coffee and Rubber under separate arrangement. Different Provinces and states have been assigned certain quotas and the quotas so assigned are communicated to M/s Imperial Chemical Industries (India) Ltd., who arrange on behalf of the Govt. of India to make supplies to each Provl. Govt. against the quota assigned ~~x x~~ to it. The Provl. Govt. is required to communicate to M/s. I.C.I. the place or places where they should send the fertilisers and the dates by which each consignment should be sent. It is clearly stated that M/s. I.C.I. would be responsible only to the extent of getting the fertilisers despatched by the Railway, and it would be the concern of the Provl. Govt. of unloading of the wagons, and the storage, distribution and sale of the chemicals. In para 6, the Govt. of India states thus:-

"M/s I.C.I. (Idia) Ltd. have intimated to the Govt. of India that they have detailed sales organisation in

the greater part of country and that they would be prepared to undertake the retail distribution within any Province or State if its Govt. desire them to undertake the work. Their charges will be as below."

It was in pursuance of this instruction that this Govt. appointed M/s. I.C.I. (India) Ltd. as sole distributing agents for imports of fertilisers allotted to this Province. Presumably the arrangements for unloading the wagons, for storage of fertilisers and the work distribution was entrusted to M/s. I.C.I. The effect of the arrangement appears to be that on unloading the quota supplied by the Govt. of India to this Province, the property in the fertilisers vested in this Govt. and that M/S. I.C.I. held the stock in their godown for and behalf of this Govt. only for the purpose of redistribution to various centres indicated by Govt. As the stock of 50 bags of sulphate of ammonia which was destroyed by fire was the property of Govt. and not M/s. I.C.I. would be liable for the loss. The view expressed in the A.L.D.D. office note dt. 27/11/48 is correct. (see section 312/A of the Indian Contract Act)

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2. The view expressed in the A.& R.D.D. office note dated 27.11.48 is correct (see section 213 of the Indian Contract Act).

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L.R. to A.& R.D.D., No. 1242, dated the 2nd February, 49.

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Regrant of land notified under section 4, 6 and 17 of the Land Acquisition Act, 1894.

There is no legal objection to regranting the land to the former owners on the original tenure in consideration of full discharge of Government's liability to pay compensation under the Land Acquisition Act.

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U.R. to R.D., No. 1091; dated the 29th January, 1949.

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On 30th July 1948 Government issued notification No. 4572/48 under section 4(1) of the Land Acquisition Act, 1894, the material part of which reads as follows :-

> "Whereas it appears to the Government of Bombay that the lands specified in the schedule are likely to be needed for a public purpose, viz. for Bhadkamkar's Charitable Hospital. It is hereby notified under the provisions of section 4 of the Land Acquisition Act, 1894 (I of 1894) that the said lands are likely to be needed for the purpose specified above."

Para. 4 of the notification states that if Government is satisfied that the said lands are needed for the aforesaid purpose, a final notification to that effect under section 6 will be published in the Bombay Government Gazette in due course. It now transpires that Government has decided to acquire the land at its own cost and to make over to the authorities of the Bhadkamkar Charitable Hospital the land required for the cottage hospital. Proceedings under section 5A have been completed and the Collector has submitted draft notification under section 6. It is now proposed to correct the purpose for which lands are to be acquired by issuing an erratum and the R.L.A. is requested to advise whether this procedure would be in order.

2. In the case of the Broach Sevashram Hospital R.L.A.'s opinion No. 275, dated 7-8-1947, the Sevashram not being a registered society within the meaning of clause (e) of section 3 of the Land Acquisition Act, 1894, R.D. issued a fresh notification under section 4(1) declaring that the land is likely to be needed for a public purpose. In the present case it is true that Bhadkamkar Charitable Hospital is registered under the Societies Registration Act, 1860 and so there is no legal difficulty in acquiring land for the said society as in the case of the Broach Sevashram Hospital. But the lands in the present

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cases were notified under section 4 for a public purpose and merely because the particular purpose, namely, for Bhadkamkar's Charitable Hospital, was stated in the notification would not lead to an inference that the land was to be acquired for the company. Since Government propose to acquire the land at its own cost for the Bhadkamkar Charitable Hostpial it cannot be said that there has been any change of purpose so as to affect the right of the objectors to notify their objections under section 5A. (Please see R.L.A.'s opinion No. 5051, dated 17-5-1947). The videlicet (viz.) means "that is to say," and in judicial interpretation the expression "that is to say" is generally treated as restriction or limitation and not merely illustrative. There should, therefore, be no objection while issuing a declaration under section 6 to retain the words "viz., for Bhadkamkar's Charitable Hospital"; for the main purpose namely the public purpose would still remain the same. (Please see R.L.A.'s opinion No. 5052, dated 17-5-1947). It is therefore not necessary to issue errratum as proposed by the R.D.

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U.T. to R.D., No. 1008; dated the 27th January, 1948

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question whether one notificat on under section 6 can be issued applying urgency clause to lands which are waste and arable and not wastex and non-arable Land Acquisition Act, 1894, sections 6, 17.

The draft notification at pages 91-101 ante directs the Collector to take possession of all waste or arable lands specified in the notification. However waste and arable lands are not so separately specified in the said notification as to be distinguished from lands which are not waste and non-arable. Such a notification would be defective and if Government wants to issue one notification in respect of all lands under section 6 it would be necessary to specify separately waste and arable lands so that the urgency clause may be applied to these lands only. Unless therefore the draft notification at pages 91-101 ante is suitably amended it would not be possible to issue one notification applying the urgency clause to certain of the survey numbers.

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U.R. to R.D., No. 1230; dated the 2nd February 1949.

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1461, dt. 1-8-49.

Submitted.

By R.D. notificat.onNo. 10589/45 dated 23.12.46. certain lands in the villages of Madhi, Bhatlav Nani, Orgam, Sigod, Nafi Kacche and Haripura Kadod in Bardoli Taluka were notified under sec. 4 of the Land Acquisition Act, 1894 for a public purpose viz., for Madhi-Kadod Road. The Collr. of Surat states that the work of constructing the road is of urgent nature as a relief measure and therefore possession of the lands have been taken over and handed over to the P.W.D. He further states that except S.No. 57 of Haripura Kadod, the rest of the lands are either waste or arable and S.No. 336 of the same village is Govt. land assigned to infer'or village servants. He therefore requests that the above notification may be cancelled except in respect of S.No. 57 Haripura Kadod and the rest of the lands except S.No. 336 be notified under sec. 4 ~~xf~~ with the urgency clause. U.S.R.D. is of the view that it is not necessary to cancel the saidxx notification under sec. 4 but a notification in form "G" dispending with the provisions of sec. 5-A with the exception of two S.Nos. 57 and 336 of Haripura Kadod may be issued and as regards S.No. 57 the Collr's report under section 5-A and draft notification under sec. 6~~xx~~ may be called for. The R.L.A. is requested to advise whether this procedure would be in order and, if not, what course should be adopted.

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The view taken by Under Secretary, Revenue Department, in his note at pp. 6 ante is correct and the course indicated by him may be followed.

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U.R. to R.D., No. 1496; dated the 6th February, 1919.

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Question whether it is necessary to cancel notification issued under section 4 read with section 17 in the case of acquisition for a company.

Land Acquisition Act, 1894. sections 4, 6, 17 and 39.

Section 39 of the Land Acquisition Act, 1894, prohibits the application of the emergency clause under section 17 unless with the previous consent of the Provincial Government nor unless the Company shall have executed the agreement mentioned in section 41; and prima facie the issue of the notification applying the emergency clause along with the notification under section 4(1) could be unwarranted by law. This notification is therefore likely to be challenged on the ground of illegality. Since the notification under section 4(1) canbe served from the notification applying the emergency clause under section 17 that portion of the notification which applies the emergency clause may be cancelled by a separate notification pointing out at the same time that it is bein cancelled as the urgency clause could not be applied along with the notification under section 4(1). In that case Government may order an inquiry under section 40(1) and if on inquiry Government is satisfied that the land is needed for the urpose as provided in that section, Government may make a declaration to that effect and take an agreement from the Company and issue a final notification under section 6 applying the emergency clause. The other alternative would be to cancel the notification under section section 4 applying the emergency clause already issued by Government and to issue fresh notification under section. 4.

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U.R. to R.D., No. 1687; dated the 12th February, 1949.

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Office of the R.L.A.

By G.N., R.D. No. 4524/45, dated the 24th February 1948 Government notified under section 4 of the Land Acquisition Act, 1894 certain lands in villages of Nive, Tamboni Budruk, Arak, Garule, Mulshi Khurd, Pongaon, and Mandival of Mulshi Pethe for the purposes of the Tata Hydro Electric Company namely, for Hydraulic works. By G.N., R.D. No. 4524/45, dated 21st July 1948 issued under section 6 read with section 17 some of these lands were finally notified. Objections under section 5-A were not heard nor any agreement under section 41 has been executed in view of the opinion of the Solicitor to Government No. 10693, dated 7th November 1947 (page 17 ante). The Collector of Poona wants to know whether in view of R.L.A.'s opinion No. 8363, dated 31st August 1948 the Company will be required to execute a fresh agreement under section 41. R.D. states that notifications under section 4 and 6 read with section 17 will have to be cancelled and lands will have to be notified for acquisition under section 4 and the Collector asked to submit his report under section 5A and the draft final notification under section 6 together with a draft agreement under section 41. R.D. has accordingly forwarded draft notifications at pages 83-87 for scrutiny.

2. Clause 1 of the agreement dated 20th May 1921 between the Tata Power Company and the Secretary of State for India in Council provides for acquisition of lands from time to time whenever the Company shall apply in writing in villages mentioned in the Schedule to the agreement. Clause 7(1) provides that the Company shall on or before 1st June 1926 or within such extended

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period as Government may allow to complete the works upon the said acquired lands etc. It appears that after 1st June 1926 no extension was applied for nor was it granted by Government. The works which were proposed to be constructed by the Company and for which lands were needed to be acquired were completed, whereafter the agreement exhausted itself. Therefore clause 1 of the agreement cannot be relied upon to save the execution of a fresh agreement under section 41. This case is on all fours with that in R.L.A.'s opinion No. 6368, dated 31st August 1948. A fresh agreement under section 8 x 41 is therefore necessary. The notification issued under section 6 read with section 17 may be cancelled and when the Government is satisfied after considering the report either under section 5A(2) or under section 40 that the land is needed for a public purpose Government can give its consent to acquire the land under section 39 and require the Company to execute ~~xxxxxxx~~ an agreement under section 41. It is not necessary to cancel the notification under section 4.

The notification at page 35 as amended will serve the purpose.

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U.R. to D.D., No. 641; dated the 18th January, 1949.

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R.I. No. 1034 dt. 24.1.1949.

Submitted.

The Collector of Belgaum has submitted draft notifications under sections 4 and 6 of the Land Acquisition Act, 1894 for acquisition of lands which have already been used for the construction of the Vereda River Causeway and states that the lands may be acquired under urgency clause. R.D. does not know whether the possession of the lands ~~xxxx

Office of the R.L.A.

Payment of compensation in advance before the award Land Acquitition Act, 1894. Sections 11 and 31.

* The present reference is in continuation of the main R.D. file No. 3152/45 returned to theat Department by u.o.r. to R.D. No. 2448, dated 3-3-1949. It appears certain land in village Kocharab, Vastrapur and Chekhpur Khanpur of the Ahmedabad District is finally notified under section 6 of the Land Acquisition Act, 1899, for acquisition by R.D. Notification No. 3152/45, dated 15-8-1946. The owners of these lands request Government that acquisition proceedings may be expedited and that in view of the delay they may be expedited and that in view of the delay they may be paid the value estimated by the Valuation Officer in advance and the rest may be paid after the award is declared. The R.L.A. is requested to advise in the matter.

2. The main R.D. File No. 3152/45 has already been returned with U.O.R. No. 2448, dated 3-3-1949. But to answer this question generally it does not appear necessary to call for this file. Under the Land Acquisition Act it is only, on making the award under section 11 the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award unless prevented by some one or more of the contigen ies mentioned in sub-section (2) of section 31. If the parties interested and who are entitled thereto (1) do not consent to receive the amount, or (2) when there is a dispute as to title, or(3) as to the apportionate of the compensation money or (4) when the comp nsation money is payable to a person who is not competent to alienate the land, in all such cases, the Collector should deposit the amount of compensation money into the court to which a reference under section 18

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would ordinarily be made. The section further provides that the party admitted to be interested may receive the amount under protest and claim a reference under section 18. There is no provision in the Act for payment of compensation in advance, because no compensation can be fixed unless an award ex is made under section 11. The compensation is fixed on the basis of the respective interests of the persons claiming compensation and the same has to be apportioned among all persons known or believed to be interested in the land (see section 11). It will not therefore be safer to pay even a part of the compensation in advance of full payment and the only course is for R.D. to expedite the acquisition proceedings.

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U.R. to R.D., No., 2703; dated the 9th March 1949.

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It appears that by notification No. 5871-48 dated 25th November 1948, Government have notified under section 4 of the Land Acquisition Act certain lands as being needed for a public purpose, i.e., for the purposes of Atul Products Limited, and invited objections of the public and the owners thereof. The owners of the lands have submitted their objections and pending receipts of the report under section 5A(2) and the decision of Government under section 41, the owners through their Advocate Mr. Khandubhai D. Desai have made an application to Government contending that the proposed acquisition of lands would be unwarranted under section 40(1)(a) inasmuch as the lands are not needed for the erection of dwelling houses for orkmen employed by the company or for the provision of amenities directly connected therewit and that it would be against the intentions of the Legislature to acquire these lands for purposes of an industrial concern. Reliance in this connection is placed on the observations made by the Hon'ble Mr. Bilse while introducing the Land Acquisition Bill to the effect that the Act could not be put in motion for the benefit of such a company as a spinning or weaving company or an iron foundary, for although the works of such companies were distinctly likely to prove useful to the public, it would not be possible to predicate of them the terms on which the which the public should be entitled to use them, a condition precedent to the acquisition of land. The R.L.A. is requested to advise.

2. Even if the acquisition of a land does not fall under clause (a) of section 40(1), it would still be competent to acquire such land for a company provided such acquisition is needed for the construction of

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some work, and that such work is likely to prove useful to the public; see clause (b) of section 40(1). To warrent an acquisition of land under section 40(1)(a), all that is necessary is that Government must be satisfied that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public. The interpretation to be put upon the expression "likely to prove useful to the public" was considered in R.L.A.'s opinion No. 3510 dated 19.1.1954 with reference to a sugar factory. The principle there enunciated and it was wholly accepted by the Advocate General was:

> "Obviously this is not a question of law, but is a question of fact which must be decided according to the circumstances of each case. It would not be proper to hold that the work is useful to the public merely by reason of the fact that it would afford employment to the residents of the locality or the fact that the manufacturers would purchase raw material from the locality. Nor would it be right to say that th sugar factory is a concern of public utility because the product of the factory, viz. sugar would be consumed by the public. In R.D. note at p. 75 it is stated that the sugar industry is a matter of public interest to be fostered by Government and particularly the establishment of the industry in the Nira Valley area has got a special significance inasmuch as the development of the industry is that area tends to make the public money sunk over irrigation in that area productive. This aspect of the question has considerable importance in this case and would make even a private undertaking worked purely for private gain a work "likely to prove useful to the public" within the meaning of section 40(1)(b) of the Land Acquisition Act, 1894, inasmuch as it is likely to make protective works made at the cost of public money, productive. If Government in the administrative departments concerned, i.e., the R.D. and the P.W.D. endorse this statement it can be held that the development of sugar industry is in public interest and a sugar factory is a work useful to the public. The distinction appears to be that a company although producing a commodity which is useful to the public would not necessarily be a public utility company or a company carrying on any work useful to the public. But if Government decides as a matter of general policy to encourage particular industry as being useful to the economic welfare of the general public, it can be held that the work carried on by a company in furtherance of that policy is a work useful to the public.

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As pointed out above the question is one for the administrative departments to decide."

5. Mr. Khandubhai seems to rely on clause (5) of section 41 which provides that where acquisition is for the construction of any other work, the time withinwhich and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work should be specified in the agreement which the Company shall be required to enter into. He contends that if the terms on which the public shall be entitled to use the work are to be specified in the agreement, no acquisition of land for a Company can be made unless the work constructed on that land is made available for the public use subject to certain terms. This point was considered by the R.L.A. in his opinion No. 8460 dated 30-7-1937 where it was held that "the section does not lay down that the public shall necessarily be entitled to use the work in the case of acquisition under the Act." Agreeing with that opinion the Advocate General in his opinion No. 84 dated 18th September 1937 opined that clause (5) of section 41 is to be read as follows: "the terms, if any, on which the public shall be entitled to use the work." Recently the Government of India proposed to amend clause (5) of section 41 on the ground that the condition about availablity of the work constructe on the land stated in clause (5) of the section 41 unduly restricted the discretion of Government and might affect the industrial development of the country as it was not possible to predicate such terms on which the public should be entitled to use the work in every case except in the case of a public utility concern. Relying on R.L.A.'s and Advocate General's opinions of 1937, R.L.A. in his opinion No. 4311 dated 4th May 1948 held that no amendment of section 41 was necessary.

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4. The observations made by the Hon'ble Mr. Bliss while introducing the Land Acquisition Bill are relied upon by Mr. Khandubhai Desai. But such observations should be no guide to the interpretation of a statute when the provisions thereof are unambiguous; see Maxwell on Interpretation of Statutes, 9th Edn. p. 27. Consequently, if on considering the report under section 5A(2), Government is satisfied that the acquisition of the lands in the present case is needed for the construction of some work of Atul Products Limited, and that such work is likely to prove useful to the public, the acquisition would clearly be lawful. Government is the final arbiter in this matter, and a declaration made by Government that the land is needed for a public purpose would not be considered void unless it be arbitrary or capricious; nor could the Civil Court question the efficiency of the inquiry or the validity of the proceedings under section 40; see Ezra v. Secretary of State, 30 Cal. 36.

5. However, as doubts are being constantly raised on this issue, and judging by the observations of Hon'ble Mr. Bliss it seems that the language actually used has gone beyond the original intent ons of the framers of the statute, we may perhaps inform the Government of India that it would be safer to put the position beyond doubt by ~~x x~~ "suitable amendment" so as to avoid ally possibility of litigation holding up acquisition proceedings and thus hampering the rapid development of industries which Government considers essential.

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U.R. to R.D., No. 1009; dated the 27th January, 1949.

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If the whole area is derequisitioned, Government will have o restore possession to the Bandra Municipality, even of the area other than that taken possession of under the emergency clause, notwithstanding the notification issued under section 4 of the Land Requisituon Act in respect of the whole area. Consequently only such portion of the area as is covered by the emergency order under section 17(1) may be derequisitioned in the first in tance.

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U.R. to R.D., No. 3880; dated the 1st April, 1949.

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Question whether the grant can be cancelled for not reclaiming the land before 31-3-1949 etc.

Land Acquisition Act, 1894. section 48.

Grant of land measuring 25 acres out of S.No. 71(part) of Juhu was made to Mr. K.L. Gupta on payment of occupancy price at Rs. 600/- per acre and subject to certain other conditions stated in R.D. letter No. 948-D/33, dated 22-6-1945. Condition (3) of the said grant provides that the grantee shall reclaim the whole area within three years after the en of the war and he, his assigns or successors shall be liable to pay full non-agricultural assessment at the rate current in the locality on the expiry of this period. Conditions (4) provides that full possession of the land shall be given to the grantee after the full price of the land with interest, if any, has been paid by him. Condition (5) provides that in case the grantee fails to reclaim the entire area within the period prescribed above or makes default in payment of occupancy price and assessment, the grant shall be cancelled, and he will not be entitled to receive any compensation from Government in respect of any-thing done by him to the land. Condition (6) provides that the grantee, his assigns or successors shall execute the necessary agreement in form HH appended to the Land Revenue Rules etc. The HH form agreement has not been executed and full possession of the land was not given to him till 16-1-1948 though he is stated to be in actual possession. As some portion of this land was required for S.R.A. Radio Range for the Santa Cruz Air Port, notification No. 9588/45 dated 20-10-1948 under section 4 read with section 17(1) of the Land Acquisition Act, 1894, was issued in

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respect of 11 acres 1 guntha and 8 annas of land. This portion was also finally notified under section 6 with the urgency clause on 9-11-1948. The land it appears has been taken over by Government and handed over to the Aviation Department on 7-10-1948. Under Secretary, Revenue Department states in his not at pp. 211-13 ante that nearly 22½ acres of the land has been taken over by the Aviation Department leaving 2½ acres with him although he is not sure whether the condition relating to reclamation of the entire areas has been fulfilled. The R.L.A. is requested to advise on the following points:-

(A) What the real meaning of '3 years after the end of the war' is,

(B) Whether it will be competent for Government to cancel the grant to Mr. Gupta if any portion of the land is not reclaimed on the relevant date irrespective of the fact whether its possession at present is with Mr. Gupta or with the Aviation Department, and

(C) Whether Mr. Gupta could have handed over full possession to the Aviation Department without this Government's permission, although he himself held conditional possession and if 'No' whether this Government can enforce at least a share in the compensation of the land to be paid to Mr. Gupta by the Aviation Department.

2. Condition (3) of the grant provides that the grantee shall reclaim the whole area within three years after the end of the war. Section 2 of the Termination of War (Definition) Ordinance, 1948, provides that for the purpose of any provision made after the End September 1939, in any enactment or in any notification, rule or order under any enactment or in any contract, deed or any other instrument, making any referen-

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xpress or implied and in whatever form of words,
o the present war and present hostilities shall,
nless in the case of such a reference in any
ontract, deed or other instrument as aforesaid
he subject or context otherwise requires, be
eemed to continue to and to end on, the day on
hich the Proclamation of Emergency made on the
2nd day of September, 1939, under section 102
f the Government of India Act, 1935, is revoked.
he Proclamation of Emergency was revoked by H.E.
he Governor General on the 1st April, 1946.
he three years' period after the end of the war
ould therefore end on the 31st March 1949.
ondition (5) of the grant requires that the
rantee must reclaim the entire area before 31st
arch 1949, and if any portion of the land granted
o Mr. Gupta is not reclaimed before the relevant
ate the grant can be cancelled. But Government
as already notified about 11 acres of this land
nder sections 4 and 6 with the emergency clause
nd the same is taken over by Government and handed
ver to the Aviation Department on 7-10-1948.
Since the Central Government has already taken
possession of this land it vests in it absolutely
nd it is not possible at this stage to withdraw
the acquisition proceedings under section 48. Nor
would it be possible for the Bombay Government to
stop payment of the full compensation due to the
grantee under that Act nor to claim a share in the
Compensation payable to him. But if land other
than that notified by Government ~~xxxxxxxxxxxxxx~~
~~xxxxxxxxxxxxxx~~ for acquisition is not reclaimed
by the grantee before 31-3-1949 it would be compe-
tent for Government to cancel the grant in respect
of that land. From the papers forwarded it appears
that only about 11 acres, 1 guntha and 8 annas of
the land granted has been notified for acquisition.

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It is therefore not understood how the Aviation Department came to be in possession of over 22½ acres of land. Since the acquisition proceedings were taken by Government on behalf of the Central Government and in exercise of statutory powers, the question of Mr. Gupta taking formal delivery of Government before handing over possession of the acquired portion of land could not arise.

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U.O. to R.D., No. 1814 dated the 15th February, 1940.

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Question whether acquisition proceedings in Cantonment should be continued when Central Government is opposed to it.

Land Acquisition Act, 1894.

In his opinions Nos. 3887, dated the 15th April, 1948 and 4414, dated 7th May 1948, the R.L.A. has fully discussed the legal position in respect of acquisition of lands in a cantonment. When it was brought to his notice that the Central Government were agreeable to a lease being executed in favour of the Kelvani Mandal, in his opinion No. 10100, dated 28th October, 1948, the R.L.A. opined that "in these circumstances a notification for the acquisition of the limited interest of the kind should suffice." It now transpires from the letter of the Director, Military Lands and Cantonment that the Central Government is not prepared to agree to a lease being executed in favour of the Kelvani Mandal. Without accepting the correctness of the paragraph 2 of the opinion recorded by the Assistant Solicitor to the Government of India, it is clear that any acquisition of the superstructure of a land in a cantonment would be futile if the Central Government is not prepared to allow the land to be continued ing possession of the Provincial Government after acquisition of the superstructure thereon; for a month's notice would be sufficient for the Central Goevernment [redacted] him to resume the land whereupon the superstructure will have to be removed or only compensation can be claimed. The R.L.A. has all along insisted upon securing the previous assent of the Government of India. In view of their opposition now evinced by the Director, Military Lands and Cantonments, it will serve no useful purpose to proceed with the land acquisition in the present case.

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Under to R.D. No. 2782 — d. 10-3-1949

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question whether acquisition proceedings started in Poona Cantonment can be continued if the land is required by the Central Government.

Land Acquisition Act, 1894.

It appears that in the notification No. 6003/45, dated the 1st October 1947 and the notification No. 6003, dated the 6th April 1948, issued under sections 4 and 6 of the Land Acquisition Act, 1894, respectively, the land was notified for acquisition on the ground that the land was needed or likely to be needed for the public purposes i.e., for office and residential accommodation for Government purposes. Ordinarily, there arises no question of acquiring lands in a cantonment; for, such land vests in the Crown and cannot be acquired. Since, however, the Central Government, desires that these acquisitions should be proceeded with on behalf of the Central Government, there would be no objection to treating these notices as being issued on behalf of the Central Government for their office and residential accommodation; for the authority interested in disputing the legality would be only the Central Government. In assessing the compensation for the lands with superstructures thereon, compensation will have to be determined separately in respect of the land and the structures thereon; for, the land vests in the Central Government while the superstructures vest in the occupant. Further, the land can be resumed only after a month's notice. Consequently before awarding compensation the Central Government may be asked to give a notice of resumption, as in the award, compensation payable in respect of the land may be mentioned as nil on the ground that the land vests in the Central Govt., and compensation payable to the occupants for the superstructures may be specified.

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U.R. to R.D., No. 2783; dated 10th March 48.

R. L. No. 4748
1-4-1943.

Submitted.

Please see R.L.A.'s opinion No. 1009, dated 27-1-1943. The Government of India was informed in terms of this opinion, (see p. 145 ante). The Government of India has now forwarded a precis of the replies received from the various Provincial Governments giving information as to how the question of land acquisition on behalf of private companies is being tackled by them and has left it to the Provincial Government to decide what amendments, if any, should be made in the Land Acquisition Act. The R.L.A. is requested to advise whether any declaratory or other amendment of the Act should be undertaken.

Sd./- P. S. Kadhavni.
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An amendment of the Act may be undertaken accordingly.

Sd./- N.T.K.
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Additional Secretary may see first.

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Amendment of section 31 of Land Acquisition Act, 1894.

x It will be desirable to give effect to Mr. Bliss' views. But that is a matter more for the Revenue Department to decide and is not a question of law.

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U.O. to R.D., No. 3887; dated the 11th April 1949.

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Acquisition of land for the Veterinary Dispensary and Local Board Office at Vada.

Here correction of the entry in the record of Rights is not likely to help the District Local Board, Thana. Section 137 of the Bombay Local Boards Act, 1923, pro tanto modifies the provisions of the Land Acquisition Act, 1894 (see Municipal Commissioner of Bombay vs. Dossabar Bros., 45 Bom. 735) with the result that on payment of compensation the land vested not in Government as usual but in the Board. This was sometime in 1924 and since then admittedly the Board is not in possession of the land. The original owner seems to be all along in possession and has sold it to others. Apparently the claim of the Board is barred by limitation. Since the land did not vest in Government, it would not be open to Government to resort to section 202, Land Revenue Code, to evict the persons in possession of the land.

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U.R. to R.D., No. 3540, dated the 1st April, 1949.

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Acquisition of land under the Act to get a clear title to the land.

Land Acquisition Act, 1894. section 3(e).

There would be no legal objection to Government acquiring the land for the Laxmi Niwas Cooperative Housing Society, Ltd., under the Land Acquisition Act, 1894, provided Government is satisfied that the land is needed by the Society for a public purpose, although such acquisition by private negotiations is primarily intended to get a clear title to the land.

resort to the provisions of the Land Acquisition Act instead of by

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U.R. to R.D., No. 3770; dated the 7th April 1949.

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The term "arable" has not been defined in the Land Acquisition Act, 1894, and will, therefore, have to be given its dictionary meaning, namely, "capable of being ploughed, ~~fit~~ fit for tillage; opposed to pasture or woodland." All bagayat lands are not necessarily incapable of being ploughed or unfit for tillage. In fact, the very best crops of rice of the description known as manjurvel, followed by methi, tur or val are produced yearly in what is described as natural bagayat and in other kinds of bagayat land too crops are produced (see Gordon's Survey and Settlement Manual, Vol. 2, pages 319-323). On the other hand, there might be bagayat lands which do not grow any periodical crops but which are covered by permanent crops or which are used as orchards or gardens. These latter will undoubtedly have to be excluded from the scope of arable lands. That is the practice followed under the executive instructions of the Government of Bengal (see Bengal Acquisition Manual, p. 95). From this point of view the statement in Anderson's Land Acquisition Manual that the possession must be limited to arable and waste land and that these terms do not certainly include gardens is correct and needs no modification.

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U.R. to R.D., No. 3648; dated the 5th April, 1949.

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A "housing scheme" has been defined in the Land Acquisition (Bombay Amendment) Act, 1948, to mean any housing scheme which the Government may from time to time undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanctionof the Provincial Government by a local authority or company. The said definition does not, therefore, necessarily contemplate large-scale acquisition for the benefit of the number of homeless persons. It would be possible to acquire even an individual plot provided such acquisition is part of a definite scheme. The distinction is between having a scheme and acquiring individual plots thereunder and acquiring plots only for one individual without a scheme. The letter is not feasible under the Act. H.M.(Labour) had in view the developing and laying out <u>for the benefit of no particular individual</u> but for promoting Government's housing programme, one of the forms being leasing or selling of plots to individuals wishing to build tenements for themselves. That would be covered by a housing scheme.

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U.R. to Labour Department, No. 4449;
dated the 22nd April, 1949.

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Acquiring lands for Housing Schemes.

The Land Acquisition Act, 1894.

Section 3(f).

It would be open to Government to make a scheme to provide either by sale or lease, land for building houses to accommodate homeless persons subject to certain conditions; and such scheme being for a public purpose within the meaning of clause (f) of section 3 of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Bombay Amendment) Act, 1948, there would be no legal objection to Government acquiring land for such a scheme under the Land Acquisition Act and selling or leasing it to private persons to build houses for accommodation of persons subject to such conditions as are prescribed by Government.

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U.R. to H.& L.G.D.(thro' Lab. Deptt.), No. 3447;
dated the 30th March 1949.

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The R.L.A. is of opinion that section 43 of the Land Acquisition Act, 1894 has no application to this case. An agreement is necessary as advised by the R.L.A.

Since the Company is prepared to execute an agreement, an agreement in terms of the draft approved by Solicitor to Government may be executed.

It will be time enough to consider the further contentions, if any, which mayxd hereafter be raised by the Company.

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U.R. to R.D., No. 6043; dated the 30th May, 1949,.

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Acquisition of land on taking written undertaking.

• There would be no legal objection to proceeding with the acquisitionof the lands provided the occupants execute an agreement to the effect that in consideration of an early settlement and payment of compensation they acquiesce in the validity of the notifications issued under section 6m of the Land Acquisition Act, and of the application of the emergency clause with all its incidental consequences and would not challenge these proceedings as illegal or void on any ground.

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U.R. to R.D., No. 5836; dated the 18th May, 1949.

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Sections 35 of the Land Acquisition Act, 1894, applies in the first place only to waste or arable lands. It is not quite clear whether the plots have been correctly described as vacant plots with shops and other business premises. But, if that description be correct, theplots cannot be occupied under section 35. That section further requires that the land should be needed for any public purpose. As a rule, resettlement of displaced persons would be a public purpose. However, in order to avoid any challenge in court, it would be desirable to have some general scheme as part of which particular plots can be occupied. It is necessary to avoid as far as possible the impression that plots are bein occupied only for an individual, as distinguished from occupation for an individual as a member of a class for whose settlement Government think it necessary to make provision.

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U.R. to Rehabilitation Deptt.(through R.D.), No. 6373, dated the 8th June, 1949.

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It has now transpired that the land was taken by the Aviation Department from the possession of Mr. Gupta not under the Land Acquisition Act, but by private negotiations. If so, there would be no legal objection to Government's withdrawing from the acquisition of the land under section 48(1) of the Land Acquisition Act. Government will have, however, to pay compensation to Mr. Gupta under section 48(2). Mr. Gupta would be also entitled to the rent of the land from the Aviation Department as provided in condition (2) of the agreement and this Government will have no right to claim any portion of the rent.

Withdrawl of acquisition proceedings in respect of land taken by private negotiations.

Land Acquisition Act, 1894. section 48(1)(2).

2. It would be necessary first to withdraw from acquisition under section 48(2) before Government can cancel the grant. Condition (3) of the grant at p. 135 ante provides that the grantee shall reclaim the whole area within three years after the end of the war and condition (5) lays down: "In case the grantee fails to reclaim the entire area within the period prescribed above or makes default in payment of occupancy price and assessment, the grant shall be cancelled and he will not be entitled to receive any compensation from Government in respect of anything done by him on the land." The broad principle on which the principle of election to rescind a contract is stated in one of the weightiest judgments of a recent times is as follows:-

> "No man can at once treat the contract as avoided by him so as to resume the property which he parted with under it and at the same time keep the money or other advantages which he has obtained under it." (see Clough v. L. & N.W.R. (1871) L.R. 7 Ex. 26; followed in Kathu v. Sankaran A.I.R. 1938 Mad. 503; Hulls's Contract Act, pp. 341-42.)

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There is distinction between cancellation of a grant and forfeiture of a grant. Forfeiture is the divestitate of specific property without compensation in consequence of some default or act forbidden by law. (see S Iyer's Law Lexicon p. 453). The grant in the present case has not been made subject to the condition of forfeiture in the event of breach of any of the covenants. It only provides for cancelling the grant, that is to say, rescinding the contract. As stated above, condition (5) debars the grantee from claiming any compensation from Government in respect of anything done by him on the land, that is to say, in respect of improvements carried on by him on the land. This condition does not appear in any way to abrogate the right of the grantee to claim refund of the purchase money money in the event of the cancellation of the grant. Consequently, Government will have to pay back the occupancy price to the grantee on cancelling the grant. The view taken by the Collector on this point is correct.

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U.R. to R.D., No. 6049; dated the 23rd June, 1949.

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R.L. No. 7085/25-5-1949.

Submitted.

Please see R.L.A.'s opinion No. 641 dated 13-1-1949, No. 1697 dated 12-3-1949 and No. 3886, dated 18-5-1949. In view of the opinion given by the Solicitor to Government No. 6125 dated 16-5-1949 R.D. requests R.L.A. to advise whether Government is bound for ever to acquire land for the Tata Hydro Electric Power Supply Co., Ltd.

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Attention is invited to R.L.A.'s opinion No. 6043, dated the 30th May 1949.

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U.O. to R.D., No. 7476; dated the 6th July, 1949.

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Office of the E.I.A.

Question whether when land is acquired under the City of Bombay Municipal Act, 1888 an order under section 3(c) and 7 of the Land Acquisition Act, 1894, is necessary.

City of Bombay Municipal Act, 1888 - sections 354B, 354M & 354P

Land Acquisition Act, 1894, Sections 3(c), 7.

Both H.& L.G.D. and R.D. seem to have overlooked the provisions of section 354B of the City of Bombay Municipal Act, 1888(III of 1888) A special procedure is laid down by this Act for acquisition of land in the City of Bombay. Section 354-B provides for the extent to which the Land Acquisition Act, 1894(I of 1894) shall apply to acquisition of land otherwise than by agreement. Clause (3) of this section provides that the date of the publication of the declaration under section 354 M or section 354 P shall be deemed to be the date of the publication of the declaration under section 6 of the Land Acquisition Act.. In the present case by Government Resolutions dated 30th December 1948 and 12th April 1949 Government has already made a declaration under section 354 M (1)(a) and has directed the Special Land Acquisition Office for Bombay City and Bombay Suburban District to take orders for acquisition. But the Special Land Acquisition Officer cannot take orders for acquisition under section 7 of the Land Acquisition Act, 1894, unless he is appointed as "Collector" under section 3(C) to perform the functions of the Collector. A notification under section 3(c) and section 7 of the Land Acquisition Act as proposed by the Special Land Acquisition Officer, at page 3 ante, would be necessary.

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U.O. to H.& L.G.D.(Through R.D.), No. 7528; dated the 7th July, 1949.

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Authorisations of Special Land Acquisition Officer under section 4(3) of the Land Acquisition Act, 1894.

The Collector of Ahmednagar requests Government to authorise the Special Land Acquisition Officer, Ahmednagar, under section 4(2) of the Land Acquisition Act, 1894, to do acts specified therein, Revenue Department states that certain officers have been authorised by Government Resolution, Revenue Department No. 5888/34, dated the 30th November 1937, dated the 4th March 1938 and dated the 16th November 1938. Revenue Department appears to be of the view that special Land Acquisition Officers by virtue of their appointment for land acquisition work can be said to be generally authorised to do the acts specified in section 4(2) of the Act. The R.L.A. is requested to advise in the matter.

2. Sub-section (2) of section 4 of the Land Acquisition Act, 1894 provides that upon publication of a notification by a Provincial Government under sub-section (1) and the Collector causing public notice of the substance of such notification to be given at convenient places in the locality concerned, it shall be lawful for any officer, either generally or specially authorised by Government in this behalf, and for his servants and workmen to enter upon and survey etc. Under this provision it will be necessary to appoint an officer generally or specially to carry out the duties mentioned therein. Consequently, the Special Land Acquisition Officer, Ahmednagar, who is appointed for land acquisition work or is appointed as Collector under section 3(c) read with section 7, will have to be authorised by Government under section 4(2) to perform the duties stated therein. Such authorisation need not be notified in the Bombay Government Gazette. (cf. R.L.A.'s opinion No. 5753, dated the 11th November 1937). The view taken by Revenue Department, at page 3 ante, is not correct.

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U.R. to R.D., No. 8248, dated the 21st July, 1949.

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Question whether it would be possible to amend agreement under section 41 which has since expired.

Land Acquisition Act, 1894. Section 41 and 43.

The question raised for Remembrancer of Legal Affairs consideration is whether it would be legally possible to revise and amend the three aggeements made by the Hydro-Electric Companies with Government which would enable them during the period of the licences to acquire land urgently required without further delay and without entering into fresh agreement every time.

2. The amendment of the old agreement as requested by the Tata Hydro-Electric Company would not be legally feasible since it has already expired. A term to this effect in the fresh agreement to be executed by the company would not also be legally feasible since Section 41 of the Land Acquisition Act, 1894, presupposes and enquiry and satisfaction of Government regarding the purpose of the acquisition of the land as provided in Section 40, sub-section 1 before an agreement is taken from the company. The only solution for the purpose is to have an independent agreement under Section 43 with the company agreeing to acquire the land for the purpose of the company from time to time. Such an agreement will be independent of the Land Acquisition Act and it would dispense with any enquiry and satisfaction of Government as provided in Section 40 sub-section 1. This agreement would be of the type entered into by Government with the Railway Company; but whether it would be desirable to enter into such an agreement binding Government to acquire land for the purpose of the company for all time to come would be a matter for the Administrative Department.

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U.O. to R.D., No. 9234; dated the 16th August 49.

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Question whether Bagayat Lands can be acquired under section 35 of the Land Acquisition Act, 1894.

The Collector of Cholapur states that Lands shown in the statement are required by the Executive Engineer, Sholapur Division, temporarily for the purpose of excavating barrow pits on either side of the Kavala Naki and Jani Chincholi road. It is proposed to acquire these lands temporarily under section 35 of the Land Acquisition Act, 1894. But it appears that some of these lands are Bagayat Lands and W.S.R.D. is of the view that if bagayat lands are covered by the word arable section in respect of all the lands may be given under section 35. The R.L.A. is requested to advise in the matter.

Attention of R.D. is invited to the recent opinion of the R.L.A. No. 3648, dated 5th April 1949, where he held that there might be bagayat lands (1) which are capable of being ploughed and in which periodical crops are grown and (2) which do not grow any periodical crops or which are used as orchards or gardens. These latter will have to be excluded from the scope of arable lands. Under section 35 of the Land Acquisition Act, only waste or arable land can be acquired temporarily. Bagayat lands mentioned in the first category can be acquired but those mentioned in the second category, namely, those use as orchards and gardens and which do not grow any periodical crops, cannot be acquired under section 35, R.D. may accordingly exclude such lands from the statement forwarded by the Collector Cholapur.

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Assistant Legal Adviser.

Enclosure w.o.r. to R.D No. 8224 of 21-7-1947

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Office of the S.L.A.,

Question whether it is necessary to ap oint Special Land Acquisition Officer as 'Collector' under section 3(e) for acquisition under section 35 of Land Acquisition Act, 1894.

It is proposed to acquire land out of S.No. 35 of Bhagwati (area 66' x 99') under section 35 of the Land Acquisition Act, 1894, for stacking excavated stuff for a period of one year. This land is different from 4 gunthas of S.No. 35 notified under sections 4 and 6 by Revenue Department Notifications No. 1186/49, dated 16-5-1949 and dated 25-8-1949. The authorisation of the Speci l Land Acquisition Officer, Bijapur, made under clause (e) of section 3 by the notification No. 1186/49, dated 16-5-1949, in respect of the 4 gunthas of land will not therefore be the authorisation in respect of land measuring 66'x 99' out of the same survey number. Apart from this the proceedings taken under sections 35, 36x and 37 will not be validated by t he provisions of clause 5 of L.A.Bill No. XLVI of 1949 because the expression "said Lands" as used in this section is defined by clause 2(e) to mean the lands which before the said date were declared by the Provincial Government under section 6 of the Land Acquisition Act as being needed for a public purpose or for the purposes of a company and any proceedings for the acquisition of which were taken by officers who were not duly appointed or directed to take such proceedings. It would therefore be necessary to appoint the Special Land Acquisition Officer, Bijapur, as Collector under section 3(e) for the purpose of acquisition of the land temporar... under section 35 of the Act. He does not appear

to have proceeded with the acquisition under section 35 as yet and the issue of the notification appointing him as Collector would give him necessary powers. (See R.L.A.'s Opinion No. 869im, dated the 3rd August, 1949.).

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U.R. to R.D., No. 9959; dated the 2nd September, 1949.

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Submitted.

The Jamkhandi State prior to integration of the State started acquisition proceedings under the Land Acquisition Act as applied to that state for Town Extension Scheme of Bambatti in 1946 and by the State Order No. 103 dated 12-12-1947, Rao Saheb Mahajan, the then Collector of Jamkhandi State was appointed under clause (c) of sec. 3 ~~of~~ to perform the functions of a Collr. for all proceedings to be taken in respect of the said lands. The acquisition proceedings are not complete and 13 lands are still to be acquired. Mr. Mahajan was therefore directed to take further proceedings but he has returned the papers on the ground that the powers of a Collr. under the Act are not conferred on him in his personal capacity but in his capacity as a Collr. and that since he has ceased to function as Collr. he cannot take any further steps. The Collr. and the Chief Administrator, Gondal, considers his personal capacity and not otherwise as presumed by Mr. Mahajan and therefore he can function as a Collr. under the Land Acquisition Act. A.S., R.D. is of the view that Mr. Mahajan can proceed with the acquisition proceedings. The R.L.A. is requested to advise.

that the powers have been conferred on him in

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Office of the R.I.A.

Exercise of powers of a Collector by an officer appointed as such by the Jamkhindi State.
Land Acquisition Act, Section 3(c).

The view taken by the Collector and Chief Administrator, Sangli, in his letter at page 1 ante, is correct, on the assumption that Mr. Manajan still continues to be an officer.

2. Attention of the Revenue Department is invited to para 104 of the Secretariat Instructions.

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Assistant Adviser of Legal Affairs.

U.R. to R.D., No. 10823, dated the 9th September,

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Office of the R.L.A.

Question whether Inamdar is entitled to solution on capitalised value of the assessment for the land required.

Land Acquisition Act, 1894, section 23(3).

Sub-section (3) of section 23 of the Land Acquisition Act, 1894, provides that in addition to the market-value of the land as provided in sub-section (1) the Court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition. This fifteen per cent is or be added to all valuations for land and things thereto attached (see paragraph 11 of the Land Acquisition Manual by Anderson). The market value of inam land will ordinarily be equal to the market value of similar Khalsa lands plus the capitalised value of the difference, termed "nukson" between the assessment and the jodi (ibid p 190). For all agricultural lands of non-service class the market value is the same as other similar land together with the capitalised value of the exemption from assessment (ibid p. 110). In the present case the capitalised value of the assessment comes to Rs. 180/-. Consequently the Inamdar would be entitled to solatium of 15 per cent on the capitalised value of Rs. 180/-. The view taken by the Commissioner, N.D., in his endorsement, dated the 10th August, 1949, at page 45 ante is correct.

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U.R. to R.D., No. 11135, dated the 5th October, 1949.

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Office of the E.L.A.

Question whether when Land is required under the City of Bombay Municipal Act, 1888 an order under section 3(e) and 7 of the Land Acquisition Act, 1894 is necessary.

Land Acquisition Act, 1894. Sections 3(e) and 7.

By Government Resolutions, Health and Local Government Department No. 6050/33, dated the 13th October 1948 and dated the 12th April, 1949, Government has directed the Special Land Acquisition Officer for Bombay City and Bombay Suburban District to take orders for acquisition. These orders could not be issued by Government unless the Special Land Acquisition Officer was appointed as Collector by a notification under section 3(e) to perform the functions of the Collector. It will therefore be necessary to appoint him as Collector under section 3(e) and then to direct him to take orders for acquisition. The Land Acquisition Officer does not appear to have proceeded with the acquisition as yet and the issuer of a notification appointing him as Collector would give the necessary powers.

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U.D. to E.D., No. 8381, dated the 2nd August, 49.

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Acquisition of Hasik golf club with Idgah in the Centre - withdrawal of part proceedings. Land Acquisition Act, 1894. section 48.

The two courses suggested in this case are:-

(1) to acquire the Idgah along with the other area but to earmark the Idgah land as an open air space or playground so that the Muslims may use it for their Id prayers only and the general public may use it in the same manner as they use other maidans, e.g., the Azad Maidan though of course this maidan does not contain the Idgah structure;

(ii) to exclude the Idgah altogether from the area proposed to be so mixed.

The question arised for the D.L.A.'s consideration is which of these two courses will cause less difficulties to Government.

2. It appears from the papers that the only legal right which the Muslims have is that shown in the column of other rights in the Record of Rights, and that right is confined to an area of 8640 square feet in S.No. 625A. Government have apparently given an understanding to the Golf Club to buy the entire property through the process of acquisition. The proprietary right in respect of 8640 square feet vests in the Golf Club. Government have, therefore, the choice of buying that right through acquisition and recognising the other right to the same extent as now described in the Record of Rights. That course would, however, be open to this objection that the right which the Muslim community claims may in course of time gradually extend to the neighbouring area; for, the very nature of the case is such that it is being claimed, and it will be claimed hereafter, that more and more space will be required for the assembly on the prayer day. Even to-day in their statement of objection the Muslims have put forth a request for acquisition of the entire survey No. 625A and the space round about. The Muslims cannot justly make any claim to an area in excess of 8640 feet. The first first course, is therefore, fraught with the

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difficulty that in future the right will be claimed in respect of a larger area and Government will thus be obliged to keep open valuable space which they are acquiring at the expense of the tax-payer.

In these circumstances the second course would be the safest course to follow, and that would also be the just course so far as the Muslims are concerned. Government may inform the Golf Club that in view of the other rights which have been recorded in the Record of Rights, it would not be profitable for them to acquire the area of 8540 square feet which they will perforce be obliged to keep open, and that, therefore, Government propose to withdraw from the acquisition of this particular area of 8540 square feet. It will then be open to the Muslims to make their own arrangement with the proprietors of the land for buying the proprietory rights in that area, if they want to do so. In any case, the Muslims will have secured what in law they are entitled to, and can have no cause for complaint that Government have interfered, with their subsisting rights.

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L.R. to R.D., No. 12856; dated the 31st October, 1949.

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Office of the R.L.A.

There is no need to make any provision for access road at this stage. The Muslims may continue to approach the Idgah as they did before. It is only when the area is built upon ~~him~~ and the possibility of access being barred arises that we need consider the claims of Muslims in this matter. At this stage, instructions may be issued that the building programme which will naturally make provisions for roads etc. should bear this claim in mind If the tomb is inseparably connected with the Idgah I would advise withdrawal in respect of the area covered by it. Even otherwise, if we wish to be consistent and repel the charge that we have not acquired a place of religious worship or significance, it would be expedient to withdraw from that area. That may be done without interfering with the compensation since the proportionate compensation is bound to be negligible. The declaration of withdrawal may thus include both areas and that need not cause delay.

Sd./- P.M. Lad,
Remembrancer of Legal Affairs.

Secy. R.D.

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Office of the R.L.A.

Statement of the Case.

By D.O. letter dated the 20th February 1949 H.M. Revenue Department pointed out to the Hon-Secretary to the Premsukhlal Mafatlal Hindu Swimming Bath and Boat Club Trust, Bombay, that Government is anxious to remove communialism from all walks of life of the people of the this Province and that it is determined to take such measures as are necessary to achieve this object. The Hon. Secretary was therefore requested to alter the terms of the Trust Deed with the consurrence of the High Court as to make it a cosmopolitan institution of which persons professing other religious faiths can become members and enjoy the aminities provided by it.

2. The Chairman of the Trustees of the said Bath and Boat Club replied to H.M. on 10-8-1949 that their institution is not an ordinary club but is a public charitable trust as held by the Hon'ble Mr. Justice Chagla in the Bombay High Court in suit No. 1440 of 1944 as a result of which a scheme was framed with the approval of the Advocate General, Bombay. He further states as follows :-

> "In view of the provisions of the Trust Deed and the judgment of the Hon'ble Mr. Justice Chagla, it is extremely doubtful whether even the High Court has jurisdiction to alter the provisions of the Trust Deed.
>
> The Trustees feel that they would be failing in their duty as Trustees if they make a change which ~~is~~ would go to the very root of the Trust Deed. They also feel that they are not competent in law to do so. The Trustees have been advised that they can go to the High Court only for construing the provisions of the Trust Deed and that neither they nor even the High Court has jurisdiction to change the very basis of the Trust Deed, viz. that the Bath is to be used for the benefit of Hindus only. It is only in very exceptional cases that a court entertains an application for change in the objects of the Trust. In any such application it has to be stated unequivocally that if the proposed change applied for is not granted, then there is a possibility of the Trust coming to an end or that the main objects

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of the Trust would be defeated and the Trust cannot be properly carried out. Even then, if a comparatively small minority of the members of beneficiaries opposes it, the Court is most reluctant to grant any such change.

However in the present case the Trust is being carried out and can be carried out in future without the proposed change and therefore the Trustees have been advised that no Court would sanction such a change. The Trustees have also been advised that if they carry out the suggestion made in your letter under reply without the sanction of the Court, it may be tantamount to a breach of trust."

3. H.M. (R) now wants to know whether there would be any legal objection to acquiring it for a public purpose. Revenue Department states that the site on which the Baths have been erected has been leased for a term of 60 years on certain conditions (see G.R.R.D., No. 8997/33, dated 20-2-1939) and since there is no breach of any conditions the lease cannot be terminated and the only alternative would be to acquire the same under the Land Acquisition Act, 1894, or to requisition the same under the Bombay Land Requisition Act, 1948. The Remembrancer of Legal Affairs is requested to advise in the matter.

4. It is clear from the preamble to the indenture of Trust deed dated the 18th August 1939 that the trustees were desirous of advancing the cause of physical culture and of providing for an urgent need for a Swimming Bath and a Boat Club for Hindus (including Jains) residing in the City of Bombay. Clause 3 of the declarations in the said indenture provides that the trustees shall stand possessed of the Trust Fund for the purpose of the said Hindu Swimming Bath and Boat Club upon trust to apply the same or such part thereof as they may in their absolute discretion think fit for establishing and maintaining in accordance with these presents and with and subject to the powers and provisions hereinafter contained the Swimming Bath

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and Boat Club for Hindus. Clause 11 also provides that use and enjoyment of the said Swimming Pool etc. shall be exclusively reserved for Hindus. Clause 29 provides that every person who shall be appointed a new or additional trustee must be a Hindu and must be a member of the Swimming Bath and Boat Club. Clause 2 of the Scheme for the management and administration of the Swimming Bath and Boat Club framed with the approval of the Advocate General, Bombay, also provides that person applying for membership shall be a Hindu and under clause 5 only a Hindu can become a founder member, a life member, ordinary member or a free member. Clause 16a provides for admission of a Hindu as a temporary member. It will thus be seen that the Swimming Bath and Boat Club is open to all Hindus and unless the terms of the trust deed are altered with the consurrence of the High Court it will not be possible to make it a cosmopolitan institution, throwing it open to members of all communities.

4. Sub-section (1) of section 4 of the Land Acquisition Act, 1894, provides that whenever, it appears to the Provincial Government that land in any locality is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the official Gazette etc. Sub-section (1) of section 6 provides that subject to the provisions of Part VII of this Act when the Provincial Government is satisfied after considering the report if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made etc. etc. The expression "public purpose" as defined by clause (f) of section 3 includes the provision of village sites in districts in which the Provincial Government shall have declared

notification in the official Gazette that it is customary for the Government to make such provision. This definition is inclusive and may include purposes other than thosex included in the definition The word 'public' means pertaining to or effecting public at large or community; open for use, enjoyment or participation of all, either free or on payment of a fee maintained by or for the public. The following test for deciding a public purpose as formulated by Batchelor J. has been accepted by the Privy Council in the case of Hamabai Framji v. the Secretary of States for India (I.L.R. 39 Bom. p. 979).

> "General definition are, I think, rather to be avoided there the avoidance is possible, and I make no attempt to define precisely the exten ion of the phrase 'public'purposes' in the lease; it is enough to say that in my opinion the phrase,whatever else it may mean, must include a purpose, that is, and object or aim, in which thegeneral interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

In the present case the amenities provided by the Baths are open to Hindus in general are not presumably restricted under the terms of trust deed to any particular caste or creed. Thus its membership is open to public at large.

What is a "a public purpose" or what islikel to prove useful to the public under the Land Acquisition Act, 1894 are matters left to theabsolute discretion of Government and even if only a section of the public is benefited, it is a public purpose (1930 Mad. 798). Conversely a land which is used for the benefit of a section of the public cannot be acquired under the Land Acquisition Act on the ground that it is needed for the benefit of a larger section of the public or of the public in general, for the Act does not provide for acquisition for enlarging the public purpose. The Premsukhlal Mafatlal Hindu Bath and Boat Club Trust being open to all Hindus is deemed to be used for the benefit

of a section of the public. But I am not quite sure of this legal position. The question is not one of enlarging the public purpose; but of acquiring land for a public purpose. If the purpose which the Government has in view is a public purpose, would it be a bar to acquisition to say that the land etc. is being used for some public purpose to day? As against this view there is a proposition laid down in the opinion of the Advocate General (Mr. M.C. Setalvad) No. 19 dated 21-4-1940 (copy enclosed) where he observed:

> "There is in terms nothing in the Town Planning Act, which prevents some land included in a Town Planning Scheme being acquired for a different purpose under the Land Acquisition Act. But on first principles it is obvious that the Provincial Government, who have included certain land in a Town Planning Scheme on that basis that it is required for a public purpose, viz. the laying out that scheme at the same time set under another Statute declaring the identical land to be acquired for another public purpose. If the Provincial Government adopted this course, it would clearly put itself in an inconsistent position."

5. Thus the question is not quite free from doubt. In view of the fact that the question is an important one and the fact that the position is doubtful the Advocate General, Bombay, is requested to be so good as to express his opinion in the matter very urgently.

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Remembrancer of Legal Affairs.

U.R. to Advocate General, No. 7125;
dated the 28th June, 1949.

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No. 23 of 1949

ADVOCATE GENERAL'S CHAMBERS,

HIGH COURT,

Bombay, 9th September, 1949.

Subject;- Mafatlal Hindu Bath and Boat Club Trust.

With reference to unofficial reference No. To Advocate General, Bombay, No.7125, dated the 28th June 1949, I may state as follows:

The Pranlal Mafatlal Hindu Bath and Boat Club Trust as held by the Bombay High Court in Suit No. 1440 of 1944 as a Public Charitable Trust. The land of the said Trust is used for the benefit of Hindus residing in the City of Bombay. Thus the land is used for a public purpose even tough a section of the public is benefited thereby. It would thus be not proper if not a bar in the way of Government acquiring the land for another public purpose.

Sd. M.P. Amin.
Advocate General.

U.R. to R.D., No. 10388; dated the 14th September, 1949.

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L.D.R.L. No. 30507 dt. 9-12-49.

Submitted.

Please see Statement of the Case prepared by the R.L.A. and the Adv. General's opinion No. 23 dated 9-2-1949 at pp. 51-63 ante. H.P. agrees with this opinion in view of 'A' of G.R. R.D. No. 5997/33, dated 20-12-1939 at p. 157 of R.D. file 5997/33,-I as the Bath is not run on profit making basis. Secy., R.D.'s view is that Govt. may consider specific legislation to cover cases of this type wherein 'public purpose' may be defined by statute as of two kinds viz. (1) as it is understood by courts to-day in its wide sense and (2) as it should be narrowed down in conformity with the current Indian Union policy viz. open to all without distinction of (nationality) creed or caste. He further states that any statutory power to limit Crown grants (or to revise the terms of such grants) made in favour of (1) to those falling under (2) only may be taken by Govt. and that if this principle is approved in principle R.L.A. and Addl. Secy., L.D. would be consulted. As stated above these papers are shown to the R.L.A. and the Addl. Secy.

2. The papers maybe seen and returned, R.D. may submit to proposals if and when it is decided to amend the Land Acquisition Act.

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L.R. to R.D., No. 14795, dated the 20th Dec., 49.

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